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Supreme Court, U.S.
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No. 94-97

In The

Supreme Court of the United States

October Term, 1994

JOHN B. TAYLOR, WARDEN, STAUNTON CORRECTIONAL CENTER,

Petitioner,

v.

WILLIAM EVANS-SMITH,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

If there were any doubt that this case cries out for certiorari review, it has surely been eliminated by respondent's brief in opposition. When respondent addresses, fleetingly and reluctantly, the heart of petitioner's complaint that the Fourth Circuit required basic facts and preliminary inferences to be individually proven beyond a reasonable doubt, *he does not deny that the Fourth Circuit did so,* but argues that there is no difference between basic facts and preliminary inferences on the one hand and the ultimate inferences constituting the elements of the offense on the other:

> [T]he characterization of any particular evidence as basic facts and preliminary inferences is a fiction when the singular objective of Petitioner is to identify Respondent as the murderer.

(Brief in Opposition, p. 31).

Respondent thus implicitly acknowledges that, under his view and that of the Fourth Circuit, basic facts and preliminary inferences must be individually proven beyond a reasonable doubt, and that the Fourth Circuit adopted exactly the new rule about which petitioner complains. That rule is inconsistent with *Jackson v. Virginia,* 443 U.S. 307 (1979), and the other decisions of this Court cited in the petition for certiorari and in conflict with the express holdings cited in the petition from the First, Second, Fifth, and Sixth Circuits, and from the appellate courts of Arkansas, California, Idaho, Indiana, North Carolina, New Hampshire, Illinois, and Massachusetts. Respondent and the Fourth Circuit also are at odds with the clear distinction this Court drew between preliminary

factual issues and ultimate facts in *Schad v. Arizona*, 111 S. Ct. 2491 (1991): "Plainly there is no general requirement that the jury reach agreement on the preliminary factual issues which underlie the verdict." 111 S. Ct. at 2497, *citing McKoy v. North Carolina*, 494 U.S. 433, 449 (1990) (Blackmun, J., concurring).

Essentially, respondent argues that the decision of the Fourth Circuit is unreviewable by this Court because the Fourth Circuit opinion recited the appropriate catch phrases from *Jackson*. Thus, under respondent's jurisprudence, a lower court may with impunity do as it wishes, as long as it recites that it is following the applicable precedent from this Court.[1]

The balance of respondent's defense of the opinion below consists, inevitably, of doing exactly what the Fourth Circuit did: ignoring the command of *Jackson* that a reviewing court defer to the jury's reasonable resolution of conflicting inferences and arguing that the jury should have drawn from the testimony inferences other than the demonstrably reasonable inferences which it drew.[2]

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[1] Even if this twisted view of the law were correct, of course, the Fourth Circuit's decision in the instant case would still call for review and reversal by this Court, because, despite its *pro forma* recitations of various phrases from *Jackson*, the Court of Appeals, in its final analysis, astoundingly acknowledged (see cert. pet. appendix, 28A) that it was adhering to its own erroneous logic in *West v. Wright*, 931 F.2d 262 (4th Cir. 1991), which every member of this Court agreed was flat wrong and a gross misapplication of *Jackson*. *Wright v. West*, 112 S. Ct. 2482 (1992).

[2] Respondent attempts to minimize the Fourth Circuit's appalling acknowledgment (see cert. pet. appendix, 12A, n. 11)

Obviously, the Fourth Circuit still does not understand the *Jackson* standard, despite this Court's teaching in *Wright v. West*. Its analysis in the instant case was a gross distortion of *Jackson*, and was thus an unauthorized and erroneous new rule. It is extremely important that this Court grant certiorari in this case to establish clear guideposts for greater uniformity and fairness in the application of *Jackson*.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, this Court should summarily reverse the decision of the Court of Appeals.

Respectfully submitted,

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September, 1994

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that it was counting heads among witnesses in order to reach a different conclusion than that reached by the jury by explaining that this acknowledgement came in a footnote. (Brief in Opposition, p. 34, n. 16).